



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| SERIAL NUMBER | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|---------------|-------------|----------------------|---------------------|
|---------------|-------------|----------------------|---------------------|

08/831,379 04/01/97 NITZAN

Z 512/8

EXAMINER

A1M1/1222

MARK FRIEDMAN & CO
C D ROBERT SHEINBEIN
2940 BIRCHTREE LANE
SILVER SPRING MD 20906

ART UNIT
BELL, B

PAPER NUMBER

4

1102

DATE MAILED:

12/22/97

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☐ Notice of References Cited by Examiner, PTO-892.
- ☒ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☒ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-30 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☒ Claims 26-30 are allowed.

4. ☒ Claims 1-25 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

Art Unit: 1102

Claim Objections

1. Claim 15 is objected to because of the following informalities: Some of the spellings of the materials listed are requested to be corrected. Appropriate correction is required.

Double Patenting

2. Claims 1 and 2 are rejected under the judicially created doctrine of double patenting over claims 1, 4 and 10 of U. S. Patent No. 5,652,043 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: A flexible thin layer open liquid state electrochemical cell comprising a first layer of insoluble negative pole, a second layer of insoluble positive pole and a third layer of aqueous electrolyte, said third layer being disposed between the first and second layers and including: a deliquescent material for keeping the open cell wet at all times; an electroactive soluble material for obtaining required conductivity; and a water soluble polymer for obtaining a required viscosity for adhering said first and second layers. The difference between the patent and the application is with respect to whether the water soluble polymer adheres the first and second layers to the first layer or the third layer. It appears that the patent having the first and second layers to the first

Art Unit: 1102

layer would be incorrect since then the two electrode layers would be adhered to each other and would short out since there is not an electrolyte or separator to keep the electrode poles from doing so. Since this is the case, it appears that the claim as instantly set forth in the patent application is properly set forth in the previous patents specification and therefore, could have been previously claimed, and also appears to have been set forth in all aspects of the patented claim 1 except for the proper adhesion to the correct layer. The specific materials of manganese dioxide and zinc as the positive and negative poles respectively already have been previously claimed in the patent.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) would overcome an actual or provisional rejection on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce Bell whose telephone number is (703) 308-2527.

Serial Number: 08/831379

Page 4

Art Unit: 1102


BRUCE F. BELL
PRIMARY EXAMINER
GROUP 1100

BFB

December 21, 1997